

IN THE HIGH COURT OF JUDICATURE AT PATNA

MA No.36 of 2006

SHARVESH SAO

Versus

SRI NAWAL SAO & ORS.

8/ 26.09.2008

Heard learned counsel for the appellant.

Nobody appears for the respondents although name of the learned counsel appears in the cause list.

Appellant has filed this Misc. Appeal for setting aside the order dated 23.12.2005 passed by the learned 2nd Additional District Judge, Hilsa, in Misc. Case No. 3 of 2003, whereby and whereunder he has dismissed the application filed on behalf of the appellant under Order 41 Rule 19 read with Section 151 of the C.P.C. for readmission of Title Appeal No. 5 of 2000 which was dismissed for default.

A plea was raised on behalf of the appellant that the appellant did not keep track of his appeal on account of his suffering from infectious disease like Tuberculosis in between period of 9.10.2002 to 20.09.2003 and as such he was prevented from sufficient cause in making pairvi.

It appears from the impugned order that three witnesses have been examined on behalf of the appellant, in addition to that a certificate granted by Doctor Jamuna Prasad was also produced which was marked Ext. 1.

The other side also examined a witness so as to negate the claim of the appellant on the ground that appellant did not suffer from any disease like T.B. for the aforesaid period and as such emphasis was given to dismiss the petition of the appellant. The learned court

below after examining their respective cases and considering evidence dismissed petition of the appellant on the ground that in execution proceeding, delivery of possession of the suit land has been effected and in case of readmission of the appeal, it would amount delaying of the matter.

Having considered aforesaid facts and circumstances, I do not find any logic in such reasoning given by learned court below so as to deny an opportunity to the appellant to contest the matter when his appeal seems to have been dismissed on technical ground. The order, thus, stands set aside and the court below is directed to dispose of the appeal within shortest possible time by avoid all sorts of adjournment.

With the aforesaid observations and direction, the appeal, thus, stands allowed.

Sanjeet

(Subash Chandra Jha, J.)

